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12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15

16 LOUIS A. COFFELT, JR.,

17 Plaintiff,

18 v.

19
20 AUTODESK, INC., a Delaware
21 Corporation,

22 Defendant.
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Case No.: 5:17-cv-01684-FMO-SHK

**DEFENDANT AUTODESK, INC.'S
REPLY TO MOTION TO
DISMISS PLAINTIFF LOUIS A.
COFFELT'S COMPLAINT**

Date: November 30, 2017

Time: 10:00 a.m.

Courtroom: 6D, 6th Floor

Hon. Fernando M. Olguin

1 Mr. Coffelt's opposition brief confirms that the Court should dismiss his
 2 Complaint. Apparently misunderstanding Autodesk's positions, Mr. Coffelt
 3 reiterates the statements in his Complaint and debates whether they qualify as
 4 "facts" or "conclusions." But Mr. Coffelt does not address *any* of the three
 5 independent grounds warranting dismissal of his Complaint.

6 In particular, Mr. Coffelt does not dispute that the Complaint (1) does not
 7 allege plausible facts showing Autodesk's access to his copyrighted works, (2)
 8 alleges infringement of an uncopyrightable idea, and (3) is based on a product that
 9 predates his copyrighted works.

10 Because Mr. Coffelt's allegations are implausible and do not state a claim
 11 upon which relief can be granted, dismissal of his Complaint is appropriate under
 12 Rule 12(b)(6) of the Federal Rules of Civil Procedure.

13 **I. ARGUMENT**

14 **A. Mr. Coffelt Still Does Not Plausibly Allege Access to the** 15 **Copyrighted Work.**

16 As Autodesk explained in its opening brief, access is a predicate for a finding
 17 of copyright infringement. *See Three Boys Music Corp. v. Bolton*, 212 F.3d 477,
 18 481 (9th Cir. 2000) ("Absent direct evidence of copying, proof of infringement
 19 involves fact-based showings that the defendant had 'access' to the plaintiff's work
 20 and that the two works are 'substantially similar.'" (citation omitted)). Although
 21 Mr. Coffelt contends that his "[C]omplaint does not rely solely on 'access'" (Opp. at
 22 2), he still must show it.

23 In his opposition, Mr. Coffelt *still* identifies no facts demonstrating that
 24 Autodesk plausibly had access to the copyrighted work. Mr. Coffelt merely repeats
 25 the bare assertions in his Complaint, such as his unsupported belief that "California
 26 Department of Correction and Rehabilitation (CDC) agents forcefully took copies
 27 of [his] copyrighted work" and that "Autodesk has a significant relationship with
 28

1 CDC.” (Opp. at 4.) Despite alleging in his Complaint he would provide evidence
 2 supporting these two statements to the Court (Compl. ¶¶ 78-79), he proffers no such
 3 evidence in response to Autodesk’s motion.

4 Mr. Coffelt’s bald allegations regarding copying are nothing more than
 5 conjecture. They do not demonstrate that it is “reasonabl[y] possib[le]” that
 6 Autodesk ever had access to or ever copied Mr. Coffelt’s work, as required to
 7 survive dismissal. *See, e.g., Art Attacks Ink, LLC v. MGA Entm’t Inc.*, 581 F.3d
 8 1138, 1143 (9th Cir. 2009) (“To prove access, a plaintiff must show a reasonable
 9 possibility, not merely a bare possibility, that an alleged infringer had the chance to
 10 view the protected work.”).

11 As for Mr. Coffelt’s alternative theory that Autodesk copied his copyrighted
 12 work from his published patent application (Compl. ¶¶ 21, 77), Mr. Coffelt hardly
 13 defends that theory in his opposition. He *still* does not identify what material in his
 14 patent application (if any) Autodesk allegedly copied. He also does not show
 15 (much less allege) that any such material is subject to copyright protection. Mr.
 16 Coffelt’s failure to state a facially plausible claim or plead sufficient facts to
 17 support access to his copyright materials warrants dismissal of his Complaint. *See*
 18 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007).

19
 20 **B. Mr. Coffelt Continues to Base His Copyright Infringement
 Allegations on Autodesk’s Alleged Use of an Idea.**

21 In his Complaint, Mr. Coffelt repeatedly argued that Autodesk necessarily
 22 infringes his copyrighted works because Autodesk’s products allow a user to
 23 “create photorealistic digital images”—allegedly just like his copyrighted software.
 24 (Compl. ¶ 20; *see id.* ¶¶ 8 (“Photorealistic CAD images do not exist prior to
 25 Coffelt’s copyright works.”)), 27 (“Coffelt requested [that Autodesk] . . . explain
 26 how [it is] creating photorealistic digital images.”).) In particular, Mr. Coffelt
 27 argued that Autodesk’s products incorporate Sony Pictures Imageworks’ Open
 28

1 Shading Language (“OSL”) language, which “creates **results** identical to Coffelt’s
2 CAD Work **results**.” (*Id.* ¶ 60 (emphases added); *accord id.* ¶ 61 (“[T]he results of
3 OSL are identical to Coffelt’s copyrighted work results.”).)

4 But it is well established that the mere use of an “idea” will not give rise to
5 copyright infringement. *See Mazer v. Stein*, 347 U.S. 201, 217 (1954) (“Unlike a
6 patent, a copyright gives no exclusive right to the art disclosed; protection is given
7 only to the expression of the idea — not the idea itself.”). It is not enough to say
8 that copyrighted and allegedly infringing works are software and have the same
9 “results.” This conflates the protections provided by patent law with those
10 provided by copyright law. *See id.*

11 Mr. Coffelt’s opposition confirms that his copyright infringement allegations
12 are based on Autodesk’s alleged use of an idea—*i.e.*, techniques for generating
13 photorealistic digital images. In his opposition, he does not dispute that the alleged
14 similarities in the “results” generated by Autodesk products and his copyrighted
15 works are what give rise to his infringement allegations. Instead, he merely
16 emphasizes that his Complaint used “results” consistent with 17 U.S.C. § 101,
17 which defines a “computer program” as “a set of statements or instructions to be
18 used directly or indirectly in a computer in order to bring about a certain **result**.”
19 (*Opp.* at 4 (emphasis added).)

20 That is beside the point. Even if the results are the same, Mr. Coffelt must
21 plausibly allege that Autodesk copied the literal or non-literal elements of a
22 copyrighted **computer program** that generated those results. *See Oracle Am., Inc.*
23 *v. Google Inc.*, 750 F.3d 1339, 1355 (Fed. Cir. 2014), *cert. denied* 135 S. Ct. 2887
24 (2015). Mr. Coffelt does not make this showing in the Complaint or his opposition.

25 Mr. Coffelt does not even try to carry this burden. He simply concludes—
26 without explanation—that Exhibits 104 and 115 to the Complaint “clearly show”
27 that a Sony Pictures Imageworks employee, Larry Gritz, “dissect[ed] Coffelt’s
28 computer program and distribute[d] it into several different files in order to hide

1 copyright infringement.” (Opp. at 5.) But he does not explain why that conclusion
 2 is plausible, much less necessarily true.

3 **C. The Accused OSL Source Code Predates Mr. Coffelt’s**
 4 **Copyrighted Work.**

5 It is unclear precisely what Mr. Coffelt is arguing regarding OSL’s release
 6 and public availability before he allegedly developed his copyrighted works. (Opp.
 7 at 5-6.) Mr. Coffelt appears to dispute whether the exhibits for which Autodesk
 8 sought judicial notice actually include OSL code or discuss their functionality.

9 Regardless, in his opposition Mr. Coffelt does not dispute that the relevant
 10 functionality in OSL was released by 2010—before he allegedly developed his
 11 copyrighted works. For this reason, the mere fact of Autodesk’s use of OSL cannot
 12 plausibly suggest that it is infringing Mr. Coffelt’s copyrights. *See Christian v.*
 13 *Mattel, Inc.*, 286 F.3d 1118, 1128 (9th Cir. 2002) (“a prior-created work cannot
 14 infringe a later-created one”). To the contrary, this allegation, taken as true, would
 15 only serve to plead Mr. Coffelt out of court. *See Weisbuch v. Cnty. of L.A.*, 119
 16 F.3d 778, 783 n.1 (9th Cir. 1997) (“[A] plaintiff may plead herself out of court.”
 17 (citing *Warzon v. Drew*, 60 F.3d 1234, 1239 (7th Cir. 1995))).

18 **II. CONCLUSION**

19 Mr. Coffelt bases his allegations in his Complaint entirely on (1) conjecture
 20 about Autodesk’s complicity with the CDC, (2) Autodesk’s alleged use of ideas and
 21 not protected expression, and (3) OSL code that predates Mr. Coffelt’s copyright
 22 registrations by several years. His opposition does nothing to show otherwise. For
 23 any or all of these reasons, Autodesk urges the Court to dismiss Mr. Coffelt’s
 24 Complaint under Rule 12(b)(6) for failure to state a claim.

25
 26 Dated: November 16, 2017

By: /s/ Richard S.J. Hung

27 MORRISON & FOERSTER LLP
 28 Attorneys for Defendant
 AUTODESK, INC.